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File No. o Municipal Corporation Legal Department

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Subject:—

Opinions under on the Bombay Municipal Corporation Act, 1949

File No. o Municipal Corporation/51

C O N T E N T S.

Legal Department File No. 3. Municipal Corporation /51.
(G. Br.)

Sr. No.	B.I./B. No.	Subject.	Pages.
		Opinions under the Bombay Municipal corporation Act, 1949.	
1.	G.No. G-22 13.3.51.	Re: Imposition of town duty on the food-grains imported by and Central Govt.	1-4.

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Sections 192 to 195 of the Bombay Municipal Corporations Act relate to the levy of town duty. Of these section, section 192 is the charging section. That section authorises the imposition of a town-duty in respect of the articles mentioned in the Schedule H. Section 194 provides that no town-duty shall be leviable on any article, which at the time of its importation, is certified by an officer empowered by the Government concerned to be the property of the Government. Section 194-A provides for exemption of article imported for immediate exportation, while section 195 provides for refund of town-duty on export of the articles imported. It will be apparent from these various provisions that a town-duty is imposed not upon the articles themselves in their character as property but is imposed upon the act of importation into Greater Bombay. Such town duty is a tax on the entry of goods into a local area for consumption use or sale therein and falls under entry No. 52 in list II in the Seventh Schedule to the Constitution. Now article 285 of the Constitution exempts the property of the Union from all taxes imposed by a State or by any authority within a State. The provision of this article correspond to section 114 of the Australian Constitution. That section provides inter alia that a State shall not, without the consent of the Parliament, impose any tax on property of any kind belonging to Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State. In the case of the Attorney General of New South Wales versus the Collector of Customs for New South Wales (1908) 5 C.L.R. p. 818. the plaintiff, relying on section 114, contended that the steel rails which were purchased in England and imported into New South Wales for the use of the State in the construction of State railways were not liable to custom duties. The High Court did not uphold the plaintiff's contention. In that case the High Court held that custom duties, whether capable or not of being included in the word 'tax' not a tax upon property in the sense in which that expression is used in section 114, being imposed upon the act of importation, and not upon the goods themselves in their character as property. The High Court accordingly held that section 114 did not apply to the levy of customs. Section 114 corresponds to article 285(1) of the

Constitution, and following the judgment of the High Court of Australia, it can be held that the levying of town-duty is not an imposition of a tax upon property within the meaning of article 285 of the Constitution, and therefore, that article has no application to the imposition of a town-duty. Article 285(1) of the Constitution is thus no bar to the imposition of town-duty on the food-grains imported by the Central Government into Greater Bombay. But as pointed out in Advocate General's opinion No. O/636 dated 31st October 1949, if the food-grains imported by the Central Government are certified by the proper officer to be the property of the Government they will be exempt from the town-duty. It appears from these papers that since July 1949 the necessary certificates are being issued by the Regional Food Commissioner it will not be competent for the municipality to Government. As long as such certificates are issued by the Regional Food Commissioner it will not be competent for the municipality to levy town-duty on the food-grains imported by the Central Government. It will be open to the authorised officer of the Central Government, and to the authorised officer of the State Government, where the food-grains belong to the State Government, not to grant any certificate under section 194(1) and thereupon the municipality can validly levy town-duty on such food-grains when imported into Greater Bombay.

Sd/- J.R. Dhuranadhar.
10.3
Remembrancer of Legal Affairs.

U.O.N. to D.C.S. (Accounts) No. G. 90, dated the 10th March 1951.

V.H.D/31.7
Lc.